

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAULA BLAIR, ANDREA ROBINSON, and
FALECHIA HARRIS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

RENT-A-CENTER, INC., a Delaware
corporation, RENT-A-CENTER WEST, INC.,
a Delaware corporation, and DOES 1–50,
inclusive,

Defendants.

No. C 17-02335 WHA

**ORDER RE MOTION
FOR SUMMARY JUDGMENT
AND MOTION FOR PARTIAL
RECONSIDERATION**

INTRODUCTION

In this class action involving rent-to-own transactions, defendants move for summary judgment on plaintiffs’ usury claim and plaintiffs move for partial reconsideration of an order granting in part and denying in part class certification. To the extent stated below, the motion for summary judgment is **GRANTED**. The motion for partial reconsideration is **GRANTED IN PART AND DENIED IN PART**.

STATEMENT

Defendants Rent-A-Center, Inc. and Rent-A-Center West, Inc. (collectively “RAC”) maintained rent-to-own stores throughout California. These stores rented and sold new and used household merchandise (*e.g.*, appliances, electronics, and furniture) to consumers for periodic payments. Customers could either rent the merchandise for a period of time or, if all

1 payments had been made after a specified period, the consumer would own the merchandise.
2 Consumers also had the right to acquire the merchandise prior to the end of the specified period
3 by exercising an early-purchase option. The rental-purchase agreements governing these
4 transactions defined plaintiffs as “lessee/renter/consumer” and defined RAC as “lessor/owner.”
5 The agreements further provided that “[p]ayments [were] due at the beginning of each term that
6 you choose to rent the property.” The consumer had no obligation to renew the agreement
7 beyond the initial term, but could elect to do so by making an advance payment for another
8 successive term (Dkt. Nos. 118-39, 118-40).

9 In March 2017, plaintiff Paula Blair initiated this action in state court. After RAC
10 removed the action to this district court, an amended complaint added plaintiffs Andrea
11 Robinson and Falechia Harris. The operative complaint sought relief for violations of (1)
12 California’s Karmette Rental-Purchase Act, (2) California’s Consumers Legal Remedies Act, (3)
13 usury, and (4) Section 17200 of the California Business and Professions Code. An October
14 2017 order denied most of RAC’s motion to compel arbitration and denied RAC’s motion to
15 stay pending arbitration. RAC’s appeal of the arbitration order is still pending and oral
16 argument on appeal is set for February 2019 (Dkt. Nos. 1, 43, 62, 82).

17 A November 1 order granted in part and denied in part the parties’ cross-motions for
18 summary judgment on plaintiffs’ Karmette Act claim. A parallel order issued that same day
19 granted in part and denied in part plaintiffs’ motion for class certification. RAC now moves for
20 summary judgment on plaintiffs’ usury claim (the only claim certified for class treatment) and
21 plaintiffs move for partial reconsideration of the order granting in part and denying in part class
22 certification (Dkt. Nos. 153–55, 163). This order follows full briefing and oral argument.

23 ANALYSIS

24 1. SCHEDULING ORDER.

25 The scheduling order set a October 18 deadline to file dispositive motions. The order
26 provided that no dispositive motions would “be heard more than 35 days *after* this deadline, *i.e.*,
27 if any party waits until the last day to file, then the parties must adhere to the 35-day track in
28 order to avoid pressure on the trial date” (Dkt. No. 92) (emphasis in original). Although RAC

1 filed the instant motion on October 18, because of the Thanksgiving holiday RAC noticed the
2 motion for hearing on November 29 — 42 days after the October 18 deadline. While this order
3 agrees that RAC did not adhere to the scheduling order in noticing a hearing date, the trial has
4 since been continued to April 2019 and RAC otherwise filed the motion by the October 18
5 deadline. There is accordingly no prejudice to plaintiffs in proceeding to address the motion on
6 the merits. Plaintiffs' motion to strike the motion for summary judgment is **DENIED**.

7 **2. MOTION FOR SUMMARY JUDGMENT.**

8 Summary judgment is proper where the pleadings, discovery, and affidavits show that
9 there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a
10 matter of law." FRCP 56(a). Material facts are those which may affect the outcome of the case.
11 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Here, the relevant facts are not in
12 dispute.

13 The California Constitution provides that "any loan or forbearance of any money, goods,
14 or things in action, if the money, goods, or things in action are for use primarily for personal,
15 family, or household purposes," may accrue "at a rate not exceeding 10 percent per annum."
16 Cal. Const. Art. 15, § 1. California's usury law therefore applies only to transactions which
17 constitute a "loan or forbearance." This order concludes that the rent-to-own transactions at
18 issue in this litigation do not constitute a loan or forbearance and that California's usury laws
19 are therefore inapplicable.

20 A "loan of money is a contract by which one delivers a sum of money to another, and
21 the latter agrees to return at a future time a sum equivalent to that which he borrowed." Cal.
22 Civil Code § 1912. Rent-to-own transactions do not fall within this definition. Under the
23 parties' rental-purchase agreements, plaintiffs made rental payments in advance to lease
24 household goods on a weekly or monthly basis. Plaintiffs agree that this is a lease "in form" but
25 argue that the transaction is nevertheless a loan "in substance." To be sure, in determining
26 whether a transaction is a usurious loan, one "must look to the substance of the transaction
27 rather than to its form." *W. Pico Furniture Co. v. Pac. Fin. Loans*, 2 Cal. 3d 594, 603 (1970).
28 According to plaintiffs' characterization, if a consumer makes all rental payments delineated in

1 a rental-purchase agreement and thereby gains ownership of an item, the consumer has in effect
2 borrowed money to purchase the item and then repaid the purchase price with an additional
3 sum. If the consumer chooses not to make all rental payments, plaintiffs argue, the consumer
4 has effectively borrowed the item and paid a hefty price for the item's use during the rental
5 period. Contrary to plaintiffs' characterizations, plaintiffs never incurred a debt or obligation to
6 purchase the goods they rented. Rather, they paid in advance of each rental period with the
7 choice to terminate the rental agreement at any time. While plaintiffs indisputably paid RAC
8 significantly more to rent these items than they would have paid to purchase outright from a
9 traditional retailer, this does not transform the rental transaction into a loan.

10 The Karnette Act itself — the very premise on which plaintiffs have anchored their case
11 — defines a rental-purchase agreement as “an agreement between a lessor and a consumer
12 pursuant to which the lessor *rents or leases*, for valuable consideration, personal property for
13 use by a consumer for personal, family, or household purposes for an initial term not exceeding
14 four months *that may be renewed or otherwise extended*, if under the terms of the agreement the
15 consumer acquires an option or other legally enforceable right to become owner of the
16 property.” Cal. Civ. Code § 1812.622 (emphasis added). The Act further provides that a rental-
17 purchase agreement “shall not be construed to be, nor be governed by . . . [a] lease or agreement
18 that constitutes a security interest, as defined in Section 1201 of the Commercial Code.” *Ibid.*
19 Section 1201 provides that “[w]hether a transaction in the form of a lease creates a ‘security
20 interest’ is determined pursuant to Section 1203,” which in turn states that “[a] transaction in
21 the form of a lease creates a security interest if the consideration that the lessee is to pay the
22 lessor for the right to possession and use of the goods is an obligation for the term of the lease
23 *and is not subject to termination by the lessee.*” Accordingly, under the text of the Karnette Act
24 and California law, a rental-purchase agreement (which can be canceled by the consumer at any
25 time without penalty) does not create a security interest.

26 Plaintiffs concede that RAC is not liable under California usury law for rental-purchase
27 transactions that fully comply with the Karnette Act's pricing requirements. They instead argue
28 that a transaction becomes subject to usury when it fails to adhere to the Act's price caps. This

1 order disagrees. That a violation of the Karnette Act's price-caps may be remedied both
2 through the Karnette Act's remedial provisions and through other "remedies[] or penalties
3 established under other laws," Cal. Civ. Code § 1812.648, does not mean that the non-
4 compliance of a rental-purchase agreement transforms the nature of the transaction into a loan
5 or forbearance subject to usury laws.

6 In sum, because the parties' rental-purchase transactions do not constitute a "loan or
7 forbearance" under California law, RAC's motion for summary judgment on plaintiffs' usury
8 claim is **GRANTED**. Importantly, because RAC moved for summary judgment before notice
9 regarding class certification was sent to members of the class, this ruling binds only the named
10 plaintiffs. *Schwarzschild v. Tse*, 69 F.3d 293, 297 (9th Cir. 1995).

11 3. MOTION FOR PARTIAL RECONSIDERATION.

12 Under Civil Local Rule 7-9(b), a party may seek leave to move for reconsideration if the
13 party can demonstrate either: (1) that there is a material difference in fact or law between the
14 time of the motion for leave and the time of an entry of an interlocutory order; (2) that new
15 material facts emerged or a change of law occurred after the entry of the order; or (3) a manifest
16 failure by the court to consider material facts or dispositive legal arguments which were
17 presented before the interlocutory order was entered. These requirements allow for
18 reconsideration of prior rulings under certain limited circumstances, but the rule does not allow
19 a party to simply relitigate an issue that has already been argued and decided. *Backlund v.*
20 *Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985).

21 Plaintiffs' motion seeks reconsideration of one issue decided in the November 1 order
22 regarding class certification — namely, whether plaintiffs' claim that RAC violated the
23 Karnette Act's price caps satisfies the predominance element of FRCP 23(b)(3). Plaintiffs'
24 motion argues two main points.

25 *First*, the November 1 summary judgment order ruled that RAC could include within its
26 "lessor's cost" the "actual freight costs," if documented, incurred in having merchandise
27 shipped to its stores through NFI or NPS. The November 1 order accordingly denied
28 certification of plaintiffs' Karnette Act claim (and derivative Section 17200 and CLRA claims)

1 on the ground that individualized issues would predominate because RAC would be entitled to
2 prove some amount of “actual” freight cost incurred with respect to each of the transactions at
3 issue. In their motion for reconsideration, plaintiffs argue that the November 1 order erred in
4 assuming that RAC’s records could, in fact, establish an “actual” NFI- or NPS- related freight
5 cost for each item. Because such records either do not exist or were not produced in discovery,
6 plaintiffs argue, individualized calculations of each item’s actual freight cost would not
7 predominate over common issues at trial.

8 As to merchandise shipped through NPS, plaintiffs are correct. The record was (and
9 remains) silent as to how RAC could prove any actual, documented freight costs associated with
10 items shipped through NPS. At most, RAC points to spreadsheets and deposition testimony
11 which explain how RAC arrived at the decision to impose the flat \$23.49 up-charge and later
12 spreadsheets documenting the aggregate costs of shipments made through NPS on a quarterly
13 basis. This evidence does nothing more than identify the total cost (albeit on a component-by-
14 component basis) of shipping the NPS products and a comparison of those total costs to the
15 total costs upon which the \$23.49 up-charge was based. These documents do not demonstrate
16 how RAC could show the “actual cost” of these shipments on an item-by-item basis as set forth
17 in the November 1 summary judgment order. Individualized questions will therefore not
18 predominate in determining RAC’s liability for such transactions under the Karnette Act.
19 (Because of overreaching by plaintiffs in the original motion, this subtlety went unnoticed in
20 that round of briefing.)

21 With respect to items shipped through NFI, by contrast, the record confirms that RAC
22 has produced sufficient documents to demonstrate some amount of “per item” freight costs,
23 including documentation of the agreed-upon rates for handling, mileage, fuel, and tolls, broken
24 down by category (*e.g.*, appliance, computer, electronics, furniture). The November 1 summary
25 judgment order made clear that RAC could contract in advance with carriers “to pay a flat fee
26 for each item delivered to one of its stores via the carrier” so long as RAC obtained
27 documentation with respect to that delivery (Dkt. No. 154 at 9–10). RAC has produced
28 documents — the Master Services Agreement (and its various amendments) between RAC and

1 NFI, invoices of amounts actually charged pursuant to these agreements, and shipping
2 information — from which to calculate actual freight costs attributable to shipping items
3 through NFI’s distribution centers to RAC’s retail stores. This, in turn, would require
4 individualized inquiries that would predominate over common questions in determining RAC’s
5 liability under the Karmette Act.

6 *Second*, the November 1 order noted its “doubts that class members whose products
7 were shipped through NPS or NFI [could] feasibly be identified.” As the order explained,
8 although RAC produced a database of information regarding California rental-purchase
9 transactions and a spreadsheet listing merchandise shipped through NPS, plaintiffs’ expert had
10 opined that the transactions identified in the spreadsheets only “generally correspond[ed]” with
11 entries in RAC’s database and that this correlation appeared to exist for only 78.1% of the
12 transactions shipped through NPS. Because the November 1 order determined that the
13 individualized issues would predominate in calculating RAC’s “lessor’s cost,” however, this
14 issue was not definitively resolved. This order concludes that the concerns mentioned in the
15 November 1 order do not preclude class certification.

16 While the party seeking certification must demonstrate that an identifiable and
17 ascertainable class exists, a class is sufficiently ascertainable when “all the parameters for
18 membership in the class are objective criteria, and defendant’s business records should be
19 sufficient to determine the class membership status of any given individual.” *Akaosugi v.*
20 *Benihana Nat. Corp.*, 282 F.R.D. 241, 255 (N.D. Cal. 2012). RAC has produced a dataset
21 identifying shipments made through NPS. This dataset contains 37,997 observations, at least
22 25,871 of which plaintiffs’ expert has already determined correspond to a specific customer. As
23 plaintiffs explain, not all of these items will be matched with a putative class member because,
24 for example, some items were never leased to a customer. Moreover, RAC has yet to produce
25 an updated transaction database which matches the time period covered by the NPS
26 spreadsheet. Although RAC critiques plaintiffs’ methodology, it does not refute that the
27 customers can, with effort, be identified. Plaintiffs have sufficiently established that records
28 exist from which the parties can identify class members without individualized issues

1 predominating. Plaintiffs' motion for partial reconsideration is accordingly **GRANTED IN PART**
2 **AND DENIED IN PART**. With respect to plaintiffs' Karnette Act claim and derivative Section
3 17200 and CLRA claims, this order will certify a subclass of individuals whose transactions
4 with RAC involved items shipped through NPS, as set forth below.

5 CONCLUSION

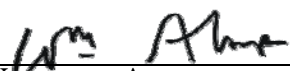
6 To the extent stated above, RAC's motion for summary judgment is **GRANTED** and
7 plaintiffs' motion for reconsideration is **GRANTED IN PART AND DENIED IN PART**. In addition
8 to the usury class certified in the November 1 order, the following subclass is certified: All
9 individuals who, between March 13, 2013 and January 17, 2018, entered into a rent-to-own
10 transaction with RAC in California for an item that was shipped to a RAC retail location by
11 RAC National Product Services, LLC and as to which RAC allocated a freight up-charge.

12 At the parties' request, the deadline to send out class notification was deferred pending a
13 ruling on the instant motion for summary judgment and motion for partial reconsideration. By
14 **FEBRUARY 20 AT NOON**, the parties shall jointly submit a proposal for class notification with a
15 plan to distribute notice — including by first-class mail — by **MARCH 1**. In crafting their joint
16 proposal, counsel shall please keep in mind the undersigned judge's guidelines for notice to
17 class members in the "Notice and Order Regarding Factors to be Evaluated for Any Proposed
18 Class Settlement," Dkt. No. 55, and take into account the rulings contained herein. All costs of
19 notice must be paid by plaintiffs.

20 Also by **FEBRUARY 20**, the parties shall file a joint submission updating the Court on
21 the status of RAC's currently-pending appeal and explaining whether or not, following the
22 distribution of class notice, the case should be stayed pending resolution of that appeal.

23
24 **IT IS SO ORDERED.**

25
26 Dated: February 11, 2019.

27 
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE